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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 22nd July, 1968:—

I

BILL No. XX OF 1968

A Bill further to amend the Advocates Act, 1961.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Advocates (Amendment) Act, 1968.

(*2*) It shall be deemed to have come into force on the 5th day of June, 1968.

25 of 1961.

Insertion of new section 58AB. Special provisions with

2. After section 58AA of the Advocates Act, 1961, the following section shall be inserted, namely:—

"58AB. Notwithstanding anything contained in this Act or any judgment, decree or order of any court or any resolution passed or direction given by the Bar Council of India, every per-

respect to certain persons enrolled by Mysore State Bar Council.

son who was admitted as an advocate on the State roll by the State Bar Council of Mysore during the period beginning with the 28th day of February, 1963, and ending on the 31st day of March, 1964, on the basis of his having obtained a certificate of pleadership from the High Court of Mysore, shall, save as otherwise provided, be deemed to have been validly admitted as an advocate on that State roll and accordingly entitled to practise the profession of law (whether by way of pleading or acting or both):

Provided that where any such person has elected to be enrolled as an advocate on the roll of any other State Bar Council, his name shall be deemed to have been struck off the roll of the State Bar Council of Mysore from the date he was enrolled by the other State Bar Council:

Provided further that the seniority of such person, whether his name is borne on the State roll of the State Bar Council of Mysore, or on the State roll of any other Bar Council, shall, for the purposes of clause (*d*) of sub-section (*3*) of section 17, be determined by reckoning the 16th day of May, 1964, as the date of admission.".

Repeal and saving.

3. (*1*) The Advocates (Amendment) Ordinance, 1968 is hereby repealed. 3 of 1968.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The provisions relating to the admission and enrolment of advocates, contained in Chapter III of the Advocates Act, 1961 came into force on the 1st December, 1961 and consequently the provisions in other enactments relating to the admission and enrolment of legal practitioners stood repealed. But, notwithstanding this repeal due possibly to an oversight, the High Court of Mysore continued to admit individuals as pleaders. The persons so admitted as pleaders thereafter got themselves enrolled by the Mysore State Bar Council as advocates although they were not entitled to be so enrolled as they had not undergone any practical training or passed the examination prescribed by the Bar Council.

2. The Bar Council of India by a resolution passed in September, 1965 directed that the enrolment as advocates of persons who had not undergone training but were admitted as pleaders by the Mysore High Court after the 1st December, 1961 should be cancelled. About 174 persons were affected by this resolution.

3. The affected persons moved the Mysore High Court and obtained an order staying the operation of the resolution cancelling their enrolment till the disposal of their petition and on the strength of the said order the persons affected have been practising.

4. After these individuals had been enrolled as advocates, the Advocates Act was amended by the Advocates (Amendment) Act, 1964 (21 of 1964) which received the assent of the President on the 16th May, 1964. One of the results of the amending Act was that persons who had obtained their law degree before the 31st March, 1964, like the 174 persons, became entitled to be enrolled as advocates with effect from the 16th May, 1964 even though they had not undergone practical training or passed any examination.

5. Taking into account the subsequent amendment and the hardship to which these individuals as well as the persons who had engaged them professionally would be put in the event of the petitions being dismissed, the Advocates Act Review Committee unanimously recommended that the enrolment of 174 advocates made by the Mysore Bar Council between the 28th February, 1963 and the 31st March, 1964 should be treated as valid with effect from the 16th May, 1964 on which date the amending Act received presidential assent.

They also suggested that suitable provision should be made to validate appearances made by these individuals before any court or other authority between the dates of their enrolment and the 16th May, 1964. The recommendation has been examined and accepted by the Government.

6. The matter had assumed urgency as the delivery of the judgment on the writ petitions by the Mysore High Court had been postponed from time to time on representations made by the parties that necessary remedial legislation was likely to be introduced soon.

7. Accordingly an Ordinance was promulgated by the President on the 5th June, 1968 validating the admission of these persons as advocates on the State Roll.

8. The Bill seeks to replace the Ordinance by an Act of the Parliament.

NEW DELHI; P. GOVINDA MENON.

The 29th June, 1968.

II

BILL No. XIX OF 1968

A Bill to define and regulate the rights and duties of parties to hire-purchase agreements and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Hire-purchase Act, 1968.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "contract of guarantee", in relation to any hire-purchase agreement, means a contract whereby a person (in this Act referred to as the surety) guarantees the performance of all or any of the hirer's obligations under the hire-purchase agreement;

(*b*) "hire" means the sum payable periodically by the hirer under a hire-purchase agreement;

(*c*) "hire-purchase agreement" means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which—

(*i*) possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and

(*ii*) the property in the goods is to pass to such person on the payment of the last of such instalments, and

(*iii*) such person has a right to terminate the agreement at any time before the property so passes;

(*d*) "hire-purchase price" means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of, or the acquisition of property in, the goods to which the agreement relates; and includes any sum so payable by the hirer under the hire-purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means; but does not include any sum payable as a penalty or as compensation or damages for a breach of the agreement;

(*e*) "hirer" means the person who obtains or has obtained possession of goods from an owner under a hire-purchase agreement, and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law;

(*f*) "owner" means the person who lets or has let, delivers or has delivered possession of goods, to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignment or by operation of law;

9 of 1872.
3 of 1930.

(*g*) each of the words and expressions used and not defined in this Act but defined in the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 shall have the meaning assigned to it in that Act.

CHAPTER II

FORM AND CONTENTS OF HIRE-PURCHASE AGREEMENTS

Hire-purchase agreements to be in writing and signed by parties thereto.

3. (*1*) Every hire-purchase agreement shall be—

(*a*) in writing, and

(*b*) signed by all the parties thereto.

(2) A hire-purchase agreement shall be void if in respect thereof any of the requirements specified in sub-section (*1*) has not been complied with.

(3) Where there is a contract of guarantee, the hire-purchase agreement shall be signed by the surety also, and if the hire-purchase agreement is not so signed, the hire-purchase agreement shall be voidable at the option of the owner.

Contents of hisepurchase agreements.

4. (*1*) Every hire-purchase agreement shall state—

(*a*) the hire-purchase price of the goods to which the agreement relates;

(*b*) the cash price of the goods, that is to say, the market value of the goods on the date of the agreement;

(*c*) the date on which the agreement shall be deemed to have commenced;

(*d*) the number of instalments by which the hire-purchase price is to be paid, the amount of each of those instalments, and the date, or the mode of determining the date, upon which it is payable, and the person to whom and the place where it is payable; and

(*e*) the goods to which the agreement relates, in a manner sufficient to identify them.

(2) Where any part of the hire-purchase price is, or is to be, paid otherwise than in cash or by cheque, the hire-purchase agreement shall contain a description for that part of the hire-purchase price.

(3) Where any of the requirements specified in sub-section (*1*) or sub-section (2) has not been complied with, the hirer may institute a suit for getting the hire-purchase agreement rescinded; and the court may, if it is satisfied that the failure to comply with any

such requirement has prejudiced the hirer, rescind the agreement on such terms as it thinks just, or pass such other order as it thinks fit in the circumstances of the case.

Two or more agreements when treated as a single hire-purchase agreement.

5. Where by virtue of two or more agreements in writing, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and the bailee has an option to purchase the goods and the requirements of section 3 and section 4 are satisfied in relation to such agreements, the agreements shall be treated for the purposes of this Act as a single hire-purchase agreement made at the time when the last of the agreements was made.

CHAPTER III

WARRANTIES AND CONDITIONS AND PASSING OF PROPERTY

Warranties and conditions to be implied in hire-purchase agreements.

6. (*1*) Notwithstanding anything contained in any contract, in every hire-purchase agreement there shall be an implied warranty—

(*a*) that the hirer shall have and enjoy quiet possession of the goods, and

(*b*) that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass.

(*2*) Notwithstanding anything contained in any contract, in every hire-purchase agreement there shall be—

(*a*) an implied condition on the part of the owner that he has a right to sell the goods at the time when the property is to pass;

(*b*) an implied condition that the goods shall be of merchantable quality, but no such condition shall be implied by virtue of this clause—

(*i*) as regards defects of which the owner could not reasonably have been aware at the time when the agreement was made, or

(*ii*) where the hirer has examined the goods, or a sample thereof, as regards defects which the examination ought to have revealed, or

(*iii*) if the goods are second-hand goods and the agreement contains a statement to that effect.

(*3*) Where the hirer expressly or by implication makes known the particular purpose for which the goods are required, there shall be an implied condition in every hire-purchase agreement that the goods shall be reasonably fit for such purpose.

(4) An owner shall not be entitled to rely on any provision in a hire-purchase agreement excluding or modifying the condition set out in sub-section (3) unless he proves that before the agreement was made the provision was brought to the notice of the hirer and its effect made clear to him.

(5) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

Passing of property.

7. Subject to the provisions of this Act, the property in the goods to which a hire-purchase agreement relates shall pass to the hirer only on the completion of the purchase in the manner provided in the agreement.

CHAPTER IV

RIGHTS AND OBLIGATIONS OF THE HIRER

Right of hirer to purchase at any time with rebate.

8. (1) The hirer may, at any time during the continuance of the hire-purchase agreement and after giving the owner not less than fourteen days' notice in writing of his intention so to do, purchase the goods to which the agreement relates on payment of the hire-purchase price or the balance thereof as reduced by the rebate calculated in the manner provided in sub-section (2).

(2) The rebate for the purposes of sub-section (1) shall be equal to two-thirds of an amount which bears to the hire-purchase charges the same proportion as the balance of the hire-purchase price not yet due bears to the hire-purchase price.

Explanation.—In this sub-section, "hire-purchase charges" means the difference between the hire-purchase price and the cash price as stated in the hire-purchase agreement.

(3) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the hire-purchase agreement, but where the terms of the agreement entitle the hirer to a rebate higher than that allowed by this section, the hirer shall be entitled to the rebate provided by the agreement.

Right of hirer to terminate agreement at any time.

9. (1) The hirer may, at any time before the final payment under the hire-purchase agreement falls due, and after giving the owner not less than fourteen days' notice in writing of his intention so to do and re-delivering or tendering the goods to the owner terminate the hire-purchase agreement by payment or tender to the owner of the amounts which have accrued due towards the hire-purchase price and have not been paid by him, including the sum, if any, which he is liable to pay under sub-section (2).

(2) Where the hirer terminates the agreement under sub-section (1), and the agreement provides for the payment of a sum named on account of such termination, the liability of the hirer to pay that sum shall be subject to the following conditions, namely:—

(a) where the sum total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination exceeds one-half of the hire-purchase price, the hirer shall not be liable to pay the sum so named;

(b) where the sum total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination does not exceed one-half of the hire-purchase price, the hirer shall be liable to pay the difference between the said sum total and the said one-half, or the amount named in the agreement, whichever is less.

(3) Nothing in sub-section (2) shall relieve the hirer from any liability for any hire which might have accrued due before the termination.

(4) Any provision in any agreement, whereby the right conferred on a hirer by this section to terminate the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a hirer by reason of the termination of the hire-purchase agreement by him under this section, shall be void.

(5) Nothing in this section shall prejudice any right of a hirer to terminate a hire-purchase agreement otherwise than by virtue of this section.

Right of hirer to appropriate payments in respect of two or more agreements.

10. A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make any such appropriation as aforesaid, the sum so paid shall, by virtue of this section, stand appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the order in which the agreements were entered into.

Assignment and transmission of hirer's right or interest under hire-purchase agreement.

11. (*1*) The hirer may assign his right, title and interest under the hire-purchase agreement with the consent of the owner, or, if his consent is unreasonably withheld, without his consent.

(*2*) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to an assignment under sub-section (*1*), and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(*3*) Where on a request being made by a hirer in this behalf the owner fails or refuses to give his consent to an assignment under sub-section (*1*) the hirer may apply to the court for an order declaring that the consent of the owner to the assignment has been unreasonably withheld, and where such an order is made the consent shall be deemed to be unreasonably withheld.

Explanation.—In this sub-section "court" means a court which would have jurisdiction to entertain a suit for the relief claimed in the application.

(*4*) As a condition of granting such consent, the owner may stipulate that all defaults under the hire-purchase agreement shall be made good and may require the hirer and the assignee to execute and deliver to the owner an assignment agreement, in a form approved by the owner, whereby, without affecting the continuing personal liability of the hirer in such respects the assignee agrees with the owner to be personally liable to pay the instalments of hire remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of such liabilities.

(*5*) The right, title and interest of a hirer under a hire-purchase agreement shall be capable of passing by operation of law to the legal representative of the hirer but nothing in this sub-section shall relieve the legal representative from compliance with the provisions of the hire-purchase agreement.

Explanation.—In this sub-section the expression "legal representative" has the same meaning as in clause (*11*) of section 2 of the Code of Civil Procedure, 1908. 5 of 1908.

(*6*) The provisions of this section shall apply notwithstanding anything to the contrary contained in the hire-purchase agreement.

Obligations of hirer to comply with agreement.

12. Subject to the provisions of this Act, a hirer shall be bound—

(*a*) to pay the hire in accordance with the agreement, and

(*b*) otherwise to comply with the terms of the agreement.

Obligation of hirer in respect of care to be taken of goods.

13. (*1*) A hirer in the absence of a contract to the contrary,—

(*a*) shall be bound to take as much care of the goods to which the hire-purchase agreement relates as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value;

(*b*) shall not be responsible for the loss, destruction or deterioration of the goods, if he has taken the amount of care thereof described in clause (*a*).

(*2*) The hirer shall be liable to make compensation to the owner for any damage caused by failure to take care of the goods in accordance with the provisions of sub-section (*1*).

Obligation of hirer in respect of use of goods.

14. If the hirer makes any use of the goods to which the hire-purchase agreement relates which is not according to the conditions of the agreement, the hirer shall be liable to make compensation to the owner for any damage arising to the goods from or during such use.

Obligation of hirer to give information as to whereabouts of goods.

15. (*1*) Where by virtue of a hire-purchase agreement a hirer is under a duty to keep in his possession or control the goods to which the agreement relates, the hirer shall, on receipt of a request in writing from the owner, inform the owner where the goods are at the time when the information is given or, if it is sent by post, at the time of posting.

(*2*) If the hirer fails without reasonable cause to give the said information within fourteen days of the receipt of the notice, he shall be punishable with fine which may extend to two hundred rupees.

Rights of hirer in case of seizure of goods by owner.

16. (*1*) Where the owner seizes under clause (c) of section 18 the goods let under a hire-purchase agreement, the hirer may recover from the owner the amount, if any, by which the hire-purchase price falls short of the aggregate of the following amounts, namely:—

(*i*) the amounts paid in respect of the hire-purchase price up to the date of seizure;

(*ii*) the value of the goods on the date of seizure.

(2) For the purposes of this section the value of any goods on the date of seizure is the best price that can be reasonably obtained for the goods by the owner on that date less the aggregate of the following amounts, namely:—

(*i*) the reasonable expenses incurred by the owner for seizing the goods;

(*ii*) any amount reasonably expended by the owner on the storage, repairs or maintenance of the goods; and

(*iii*) (whether or not the goods have subsequently been sold or otherwise disposed of by the owner) the reasonable expenses of selling or otherwise disposing of the goods.

(3) If the owner fails to pay the amount due from him under the provisions of this section or any portion of such amount, to the hirer within a period of sixty days from the date notice for the payment of the said amount is served on him by the hirer the owner shall be liable to pay interest on such amount at the rate of six per cent. per annum from the date of expiry of the said period of sixty days.

(4) Where the owner has sold the goods seized by him the onus of proving that the price obtained by him for the goods was the best price that could be reasonably obtained by him on the date of seizure shall lie upon him.

CHAPTER V

RIGHTS AND OBLIGATIONS OF THE OWNER

Rights of owner to terminate hire-purchase agreement for default in payment of hire or unauthorised act or breach of express conditions.

17. Where a hirer—

(*a*) makes default in the payment of hire as provided in the hire-purchase agreement; or

(*b*) does any act with regard to the goods to which the agreement relates which is inconsistent with any of the terms of the agreement; or

(c) breaks an express condition which provides that, on the breach thereof, the owner may terminate the agreement;

the owner shall, subject to the provisions of section 20 and section 21, be entitled to terminate the agreement by giving the hirer notice of termination in writing.

Rights of owner on termination.

18. Where a hire-purchase agreement is terminated under this Act, then the owner shall be entitled,—

(*a*) to retain the hire which has already been paid and to recover the arrears of hire due:

Provided that when such goods are seized by the owner, the retention of hire and recovery of the arrears of hire due shall be subject to the provisions of section 16;

(*b*) subject to the conditions specified in clauses (*a*) and (*b*) of sub-section (*2*) of section 9, to forfeit the initial deposit, if so provided in the agreement;

(*c*) subject to the provisions of section 16 and section 19 and subject to any contract to the contrary, to enter the premises of the hirer and seize the goods;

(*d*) subject to the provisions of section 20 and section 21, to recover possession of the goods by application under section 19 or by suit;

(*e*) without prejudice to the provisions of sub-section (*2*) of section 13 and of section 14, to damages for non-delivery of the goods, from the date on which termination is effective, to the date on which the goods are delivered to or seized by the owner.

Restriction on owner's right to recover possession of goods otherwise than through court.

19. (*1*) Where goods have been let under a hire-purchase agreement and the statutory proportion of the hire-purchase price has been paid, whether in pursuance of the judgment of a court or otherwise, or tendered by or on behalf of the hirer or any surety, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than in accordance with sub-section (*3*) or by suit.

Explanation.—In this section, "statutory proportion" means,—

(*a*) in the case of motor vehicles as defined in the Motor Vehicles Act, 1939,— 4 of 1939.

(*i*) one-half, where the hire-purchase price is less than five thousand rupees;

(*ii*) three-fourths, where the hire-purchase price is not less than five thousand rupees but less than fifteen thousand rupees;

(*iii*) three-fourths or such higher proportion not exceeding nine-tenths as the Central Government may, by notification in the Official Gazette, specify, where the hire-purchase price is not less than fifteen thousand rupees; and

(*b*) in any other case,—

(*i*) one-half, where the hire-purchase price is less than fifteen thousand rupees; and

(*ii*) three-fourths, where the hire-purchase price is not less than fifteen thousand rupees.

(2) If the owner recovers possession of goods in contravention of the provisions of sub-section (*1*), the hire-purchase agreement, if not previously terminated, shall terminate, and—

(*a*) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner all sums paid by the hirer under the agreement or under any security given by him in respect thereof; and

(*b*) the surety shall be entitled to recover from the owner all sums paid by him under the contract of guarantee or under any security given by him in respect thereof.

(*3*) Where, by virtue of the provisions of sub-section (*1*), the owner is precluded from enforcing a right to recover possession of the goods, he may make an application for recovery of possession of the goods to any court having jurisdiction to entertain a suit for the same relief.

(*4*) The provisions of this section shall not apply in any case in which the hirer has terminated the agreement by virtue of any right vested in him.

Relief against termination for non-payment of hire.

20. Where the owner, after he has terminated the hire-purchase agreement in accordance with the provisions of clause (*a*) of section 17, institutes a suit or makes an application against the hirer for the recovery of the goods, and at the hearing of the suit or application, the hirer pays or tenders to the owner the hire in arrears, together with such interest thereon as may be payable under the terms of the agreement and the costs of the suit or application incurred by the owner and complies with such other conditions, if any, as the court may think fit to impose, the court may, in lieu of making a decree or order for specific delivery, pass an order relieving the hirer against the termination; and thereupon the hirer shall continue in possession of the goods as if the agreement had not been terminated.

Relief against termination for unauthorised act or breach of express condition.

21. Where a hire-purchase agreement has been terminated in accordance with the provisions of clause (*b*) or clause (*c*) of section 17, no suit or application by the owner against the hirer for the recovery of the goods shall lie unless and until the owner has served on the hirer a notice in writing,—

(*a*) specifying the particular breach or act complained of; and

(*b*) if the breach or act is capable of remedy, requiring the hirer to remedy it;

and the hirer fails, within a period of fourteen days from the date of the service of the notice, to remedy the breach or act if it is capable of remedy.

Obligation of owner to supply copies and information.

22. (*1*) It shall be the duty of the owner to supply, free of cost, a true copy of the hire-purchase agreement, signed by the owner,—

(*a*) to the hirer, as soon as may be after execution of the agreement; and

(*b*) where there is a contract of guarantee, to the surety, on demand made at any time before the final payment has been made under the agreement.

(*2*) It shall also be the duty of the owner, at any time before the final payment has been made under the hire-purchase agreement, to supply to the hirer, within fourteen days after the owner receives a request in writing from the hirer in this behalf and the hirer tenders to the owner the sum of one rupee for expenses, a statement signed by the owner or his agent showing—

(*a*) the amount paid by or on behalf of the hirer;

(*b*) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment become due, and the amount of each such instalment; and

(*c*) the amount which is to become payable under the agreement, and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.

(*3*) Where there is a failure without reasonable cause to carry out the duties imposed by sub-section (*1*), or sub-section (*2*), then, while the default continues,—

(*a*) the owner shall not be entitled to enforce the agreement against the hirer or to enforce any contract of guarantee relating to the agreement, or to enforce any right to recover the goods from the hirer; and

(*b*) no security given by the hirer in respect of money payable under the agreement or given by a surety in respect of money payable under such a contract of guarantee as aforesaid

shall be enforceable against the hirer or the surety by any holder thereof;

and, if the default continues for a period of two months, the owner shall be punishable with fine which may extend to two hundred rupees.

(4) Nothing in sub-section (3) shall be construed as affecting the right of a third-party to enforce against the owner or hirer or against both the owner and the hirer any charge or encumbrance to which the goods covered by the hire-purchase agreement are subject.

CHAPTER VI

MISCELLANEOUS

Discharge of price otherwise than by payment of money.

23. Where an owner has agreed that any part of the hire-purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of section 9, section 10, section 16, section 19 and section 22, be deemed to be a payment of that part of the hire-purchase price.

Insolvency of hirer, etc.

24. (1) Where, during the continuance of the hire-purchase agreement, the hirer is adjudged insolvent under any law with respect to insolvency for the time being in force, the Official Receiver or where the hirer is a company, then in the event of the company being wound up, the liquidator, shall have, in respect of the goods which are in the possession of the hirer under the agreement, the same rights and obligations as the hirer had in relation thereto.

(2) The Official Receiver or the liquidator, as the case may be, may, with the permission of the Insolvency Court or the court in which the winding up proceedings are, assign the rights of the hirer under the agreement, to any other person, and the assignee shall have all the rights and be subject to all the obligations of the hirer under the agreement.

Explanation.—In this section "Official Receiver" means an Official Receiver appointed under the Provincial Insolvency Act, 1920, and includes any person holding a similar office under any other law with respect to insolvency for the time being in force.

of 1920.

Successive hire-purchase agreements between same parties.

25. Where goods have been let under a hire-purchase agreement, and at any time thereafter the owner makes a subsequent hire-purchase agreement with the hirer, whether relating exclusively to other goods or to other goods together with the goods to which the first agreement relates, any such subsequent hire-purchase agreement shall not have effect in so far as it affects prejudicially any right which the hirer would have had by virtue of section 19 under the

first agreement, if such subsequent hire-purchase agreement had not been made.

Evidence of adverse detention in suit or application to recover possession of goods.

26. (1) Where, in a suit or application by an owner of goods which have been let under a hire-purchase agreement, to enforce a right to recover possession of the goods from the hirer, the owner proves that, before the commencement of the suit or application and after the right to recover possession of the goods accrued, the owner made a request in writing to the hirer to surrender the goods, the hirer's possession of the goods shall, for the purpose of the owner's claim to recover possession thereof, be deemed to be adverse to the owner.

(2) Nothing in this section shall affect a claim for damages for conversion.

Hirer's refusal to surrender goods not to be conversion in certain cases.

27. If during the subsistence of any restriction to which the enforcement by an owner of a right to recover possession of goods from a hirer is subject by virtue of this Act, the hirer refuses to give up possession of the goods to the owner, the hirer shall not, by reason only of such refusal, be liable to the owner for conversion of the goods.

Service of notice.

28. Any notice required or authorised to be served on or given to an owner or a hirer under this Act may be so served or given—

(a) by delivering it to him personally; or

(b) by sending it by post to him at his last known place of residence or business.

Power to exempt from provisions of sections 8 and 11 in certain cases.

29. Where the Central Government is satisfied that having regard to—

(a) the short supply of any goods or class of goods, or

(b) the use or intended use of any goods or class of goods and the persons by whom such goods or class of goods are used or intended to be used, or

(c) the restrictions imposed upon the trade or commerce in any goods or class of goods, or

(d) any other circumstances in relation to any goods or class of goods,

it is necessary or expedient in the public interest so to do, the Central Government may, by notification in the Official Gazette,

direct that section 8 and section 11 or any of them shall not apply or shall apply with such modifications as may be specified in the notification, to hire-purchase agreements relating to such goods or class of goods.

30. This Act shall not apply in relation to any hire-purchase agreement made before the commencement of this Act. Act not to apply to existing agreements.

STATEMENT OF OBJECTS AND REASONS

A hire-purchase agreement is a hybrid transaction which starting as a contract of hire may culminate in an out and out sale. It is an agreement for hire with an option to the hirer to purchase the goods. Its socio-economic importance can hardly be over-estimated as it is a convenient and useful legal device for acquiring goods on long terms. There is at present no separate and specific law with respect to hire-purchase in India. Subject to the provisions of the general law as to contract and sale of goods contained in the Indian Contract Act, 1872 and the Sale of Goods Act, 1930, hire-purchase transactions are governed entirely by the terms and conditions of the agreement between the owners of goods and hirers. This sometimes leads to abuses and evils specially in relation to the hirer who is usually the weaker party to the transaction. With a view to avoiding such abuses and evils, the Law Commission has in its Twentieth Report on the Law of Hire-Purchase made detailed recommendations for the enactment of a law with respect to hire-purchase. The Bill seeks to implement the recommendations made by the Law Commission subject to a few modifications.

2. Apart from defining in precise terms the rights and obligations of the parties to a hire-purchase agreement, the provisions of the Bill seek to give special protection to a hirer wherever such protection is legitimately needed. For this purpose suitable provisions are included in the Bill for—

(*a*) ensuring that the hirer understands the true nature and implications of the agreement and is able to obtain from time to time the current state of accounts in relation to the agreement (*vide* clauses 3, 4 and 22);

(*b*) implying into every hire-purchase agreement certain conditions and warranties (*vide* clause 6) in favour of the hirer;

(*c*) giving indefeasible rights to the hirer for purchasing the goods, terminating the agreement and for assigning his interest in the agreement (*vide* clauses 8, 9 and 10);

(*d*) ensuring that the owner makes good to the hirer any unconscionable gain which he may have derived as a result of exercising his right of seizure of goods (*vide* clause 16);

(*e*) restricting the right of the owner to recover possession of the goods otherwise than by proceedings in a court of law after a specified proportion of the hire-purchase price has been paid or tendered (*vide* clause 19).

3. The notes on clauses explain in detail the various provisions of the Bill.

NEW DELHI;
The 8th July, 1968.

P. GOVINDA MENON.

Notes on clauses

Clause 2.—The definition of "hire-purchase agreement" seeks to bring out vividly the nature of a hire-purchase agreement. A hire-purchase agreement is an agreement for hire with an option to purchase the goods. The hirer's option to purchase the goods constitutes the basic and distinguishing feature of a hire-purchase agreement. The owner is bound to sell the goods to the hirer if the hirer exercises his option to buy in accordance with the terms of the agreement. But the hirer is free to exercise or not to exercise the option.

The definitions of "contract of guarantee", "hire-purchase price", "hirer" and "owner" are modelled largely on the definitions of those expressions in the U.K. Hire-Purchase Act, 1965 (hereinafter referred to as the U.K. Act).

Clause 3.—This clause lays down the requirements relating to the form of hire-purchase agreements. The clause provides that every hire-purchase agreement shall be in writing and signed by all the parties thereto. If either of these requirements is not complied with, the agreement shall be void. Further, where there is a contract of guarantee, the agreement has to be signed by the surety also and if it is not so signed, the agreement is voidable at the option of the owner.

Clause 4.—This clause corresponds to some extent to section 7 of the U.K. Act. It specifies the various matters which must be stated in a hire-purchase agreement [*vide* sub-clauses (1) and (2) of the clauses]. In the event of failure to specify any of these matters in the agreement, the hirer may institute a suit for rescinding the agreement and the court may rescind the agreement if it is satisfied that such failure has prejudiced the hirer or pass such other order as it thinks fit in the circumstances of the case.

Clause 5.—This clause is intended to prevent evasion of the provisions of the proposed legislation by the device of entering into two separate agreements, one for the purposes of hiring and the other for the purposes of granting an option to purchase. The

clause provides that such agreements shall be treated as a single hire-purchase agreement made at the time when the last of the agreements was made.

Clause 6.—This clause provides for the warranties and conditions which shall be implied in every hire-purchase agreement and is modelled to a large extent on the provisions of sections 17, 18 and 19 of the U.K. Act.

Sub-clause (1) provides that the following warranties shall be implied in every hire-purchase agreement:—

(*a*) a warranty that the hirer shall have and enjoy quiet possession of the goods; and

(*b*) a warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass.

Sub-clauses (2), (3) and (4) deal with the conditions to be implied in every hire-purchase agreement. These relate to title to the goods, merchantable quality and fitness of the goods.

Sub-clause (2) (a) provides that there should be implied a condition on the part of the owner that he will have a right to sell the goods at the time when the property is to pass.

Sub-clause (2) (b) provides for the implied condition as to merchantable quality of the goods but makes it clear that no such condition shall be implied—

(*a*) as regards defects which the owner could not reasonably be aware at the time the agreement was made, or

(*b*) where the hirer has examined the goods or a sample thereof, as regards defects which the examination ought to have revealed, or

(*c*) if the goods are second-hand goods and the agreement contains a statement to that effect.

Sub-clause (3) provides that where the hirer expressly or by implication makes known to the owner the particular purpose for which the goods are required there shall be an implied condition that the goods shall be reasonably fit for such purpose. This condition can be excluded or modified, *vide* sub-clause (4); but a duty is cast upon the owner setting up such exclusion or modification to prove that before the agreement was made the provision in the agreement providing for such exclusion or modification was brought to the notice of the hirer and its

effect was made clear to him. This provision is intended to protect the hirers who sign hire-purchase agreements without fully appreciating the effect of exemption clauses included in such agreements.

Sub-clause (5) is by way of abundant caution and is intended to ensure that the proposed legislation will not have the effect of excluding any conditions or warranties which may be implied in a hire-purchase agreement under any other enactment or rule of law.

Clause 7.—This clause deals with passing of property. The clause provides that the property in the goods to which hire-purchase agreement relates passes to the hirer only on the completion of the purchase in the manner provided in the agreement.

Clause 8.—This clause provides for the right of a hirer to purchase the goods at any time during the continuance of the hire-purchase agreement. It is intended to benefit the hirers who are able and desirous of completing the agreement even before the due date. The clause is modelled to some extent on section 11 of the New South Wales Hire-Purchase Act, 1960.

The clause provides that the hirer may, after giving to the owner not less than fourteen days' notice in writing of his intention so to do, purchase the goods to which the agreement relates on payment of the hire-purchase price as reduced by the amounts already paid by him towards such price and as further reduced by a rebate calculated in the manner provided in the clause. The rebate has to be calculated with reference to the "hire-purchase charges", that is, the difference between the hire-purchase price and the cash price of the goods. According to sub-clause (2) the rebate is on 2/3rds of the amount which bears to the hire-purchase charges the same proportion as the balance of the hire-purchase price not yet due bears to the hire-purchase price.

The following illustration indicates how the provisions of the clause as to rebate work in actual practice. Assume that—

Hire-purchase price is	..	Rs. 6,000.
Cash price is	..	Rs. 5,000.
Hire-purchase price is payable in	..	12 instalments of Rs. 500 each.
The hirer exercised his option to purchase after payment of	..	6 instalments.

As 6 instalments are not yet due, the balance of *hire-purchase price not yet due is* $6 \times 500 =$ Rs. 3,000. This amounts to *half of* hire-purchase price.

The hire-purchase charges in this case would be Rs. 1,000 being the difference between the hire-purchase price, Rs. 6,000 and the cash price, Rs. 5,000. The amount which bears to the hire-purchase charges the same proportion as the balance of hire-purchase price not yet due bears to the hire-purchase price would be half the hire-purchase charges, *viz.* Rs. 500. The rebate would be 2/3rd of this amounts, *viz.* $2/3 \times 500$ or Rs. 333⅓.

The following is a simple formula for calculating rebate in accordance with the provisions of the clause:—

$$\text{Rebate} = \frac{2}{3}\left\{\frac{\text{Hire-purchase charges} \times \text{number of instalments due.}}{\text{Total number of instalments.}}\right\}$$

Applying the above formula to the facts:

Assumed—

$$\text{Rebate} = \frac{2}{3} \times \frac{1000 \times 6}{12}$$

$$= 333\frac{1}{3}.$$

Sub-clause (3) of the clause provides that the provisions of the clause cannot be excluded by agreement. But where the agreement provides for a rebate at a higher rate, the hirer shall be entitled to the rebate as provided in the agreement.

Clause 9.—This clause corresponds to section 27 of the U.K. Act and it provides for the right of the hirer to terminate the hire-purchase agreement at any time before the final payment under the agreement falls due.

Sub-clause (2) of the clause seeks to give relief to the hirer against provisions in the hire-purchase agreement imposing a liability on the hirer to pay a specified sum of money on the termination of the agreement. The sub-clause provides that where the agreement provides for payment of such sum of money, the hirer shall not be liable to pay the same if the sum total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination exceeds one-half of the hire-purchase price. Where

the sum total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination does not exceed one-half of the hire-purchase price, the hirer is liable to pay the difference between the said sum total and the said one-half or the amount specified in the agreement as payable on termination, whichever is less. The following illustration indicates how the provisions of the sub-clause work in actual practice.

Illustration

Assume that—

(*a*) the hire-purchase price is	Rs. 6,000
(*b*) the total number of instalments is	12 of Rs. 500 each.
(*c*) the amount named as payable on termination is	Rs. 600.

In this case—

(*a*) if the agreement is terminated after seven instalments have become due, the amount named as payable on termination is not payable because the sum total of the amounts paid and due in respect of the hire-purchase price before the termination (that is seven instalments of Rs. 500 each = Rs. 3,500) exceeds one-half of the hire-purchase price;

(*b*) if the agreement is terminated after five instalments have become due, the amounts due and the amounts paid on date of termination (five instalments of Rs. 500 each = Rs. 2,500) would fall short of half the hire-purchase price by Rs. 500. The hirer need pay only Rs. 500, as this amount is less than the amount payable on termination, that is, Rs. 600;

(*c*) if the agreement is terminated after two instalments have become due, the amounts paid and the amounts due (that is, two instalments of Rs. 500 each = Rs. 1,000) would fall short of half the hire-purchase price by Rs. 2,000. As this is more than the sum named as payable on termination, the hirer would be liable to pay the full amount of the sum so named, *viz.* Rs. 600 ;

(*d*) if the agreement was terminated after six instalments have become due, the amounts paid and the amounts due on account of hire-purchase price (that is, six instalments of Rs. 500 each =Rs. 3,000) would be exactly one-half of the hire-purchase price and, therefore, the amounts stated as payable on termination need not be paid.

Sub-clause (4) of the clause provides that the rights available to a hirer under the clause cannot be excluded or restricted by the hire-purchase agreement.

Clause 10—.This clause provides for the right of the hirer to appropriate payments in respect of two or more hire-purchase agreements.

Clause 11.—In order to give relief to the hirer in cases in which he is not able to carry on with the hire-purchase agreement on account of financial difficulty or otherwise, this clause provides that the hirer would be entitled notwithstanding anything to the contrary in the agreement to assign his interest in the agreement with the consent of the owner. In case the owner unreasonably withholds his consent, the hirer may go to the court and obtain a declaration that the consent has been unreasonably withheld. The clause is modelled to some extent on section 9 of the New South Wales Hire-Purchase Act, 1960.

Clauses 12 *to* 15.—These clauses deal with the obligations of hirers. Of these, the obligation to comply with the agreement (clause 12), the obligation in respect of care to be taken of the goods (clause 13) and the obligation in respect of use of goods (clause 14) are merely declaratory of the existing position.

Clause 15 provides for obligation of hirer to give information as to the whereabouts of goods. Such an obligation will arise only if the agreement provides for it and any failure on the part of the hirer without reasonable cause to give such information would be punishable with fine which may extend to Rs. 200.

Clause 16.—This clause is intended to ensure that an owner by exercising his right of seizure does not acquire any unconscionable benefit. The clause provides that where the owner seizes the goods let under a hire-purchase agreement, the hirer may recover from the owner the amount, if any, by which the hire-purchase price falls short of the aggregate of the amounts, namely:—

(*a*) the amounts paid in respect of the hire-purchase price up to the date of seizure, and

(b) the value of the goods on the date of seizure.

Sub-clause (2) of the clause lays down as to how the value of the goods has to be computed. The following illustration indicates as to how this clause would operate in practice.

Illustration

Assume that—

(a) the hire-purchase price is	Rs. 20,000
(b) the amount paid in respect of the hire-purchase price up to the date of the seizure is	Rs. 10,000
(c) the value of the goods, on the date of seizure is	Rs. 15,000.

In this case the hire-purchase price, namely, Rs. 20,000 falls short of the aggregate of the amounts paid and the value of goods (namely, Rs. 10,000 *plus* Rs. 15,000 = Rs. 25,000) by Rs. 5,000. This sum of Rs. 5,000 may, therefore, be recovered by the hirer from the owner. If the sum is not paid within a period of sixty days from the date, notice for the payment of the said amount is served on the owner. The owner will be liable [*vide* sub-clause (3) of clause 16] to pay interest on the amount at the rate of six per cent. per annum from the date of expiry of the said period of sixty days.

Clause 17.—This clause deals with the right of the owner to terminate the hire-purchase agreement.

Clause 18.—This clause deals with the rights of an owner on termination of a hire-purchase agreement.

Sub-clause (c) of this clause provides for the owner's right to enter the premises of the hirer and seize the goods. The owner's right of seizure cannot be exercised in cases where the "statutory proportion" as defined in clause 19 of the Bill has been paid or tendered by or on behalf of the hirer or any surety. See also notes on clause 16 above.

Clause 19.—This clause provides that where the "statutory proportion" as defined in the *Explanation* to sub-clause (1) has been paid or tendered by or on behalf of the hirer or any surety, the owner shall not recover the possession of the goods from the hirer otherwise than by proceedings by way of application or suit made or instituted for the purpose in a court.

The *Explanation* to sub-clause (1) defines what amounts to "statutory proportion" in the case of motor vehicles and other goods.

Sub-clause (2) provides for penalties for contravention of the provisions of the clause.

Clauses 20 & 21.—These clauses which are self-explanatory are modelled on sections 114 and 114A of the Transfer of Property Act, 1882 and are intended to make available to the hirer necessary relief in case of termination of a hire-purchase agreement by the owner.

Clause 22.—This clause provides for supply of copies of hire-purchase agreement and information regarding payments made and payments due under the hire-purchase agreement to the hirer. If there is default on the part of the owner to supply the same, the owner will not be entitled to enforce the agreement against the hirer or to enforce any contract of guarantee or to enforce any right to recover the goods from the hirer. Further, any security given by the hirer or by a surety in respect of the agreement will also not be enforceable. In case of continuing in default for a period of two months or more, the owner becomes liable for punishment with fine which may extend to Rs. 200.

Sub-clause (4) of the clause makes a special provision of protecting the rights of third parties to enforce against the owner or the hirer or against both the owner or the hirer any charge or encumbrance to which the goods covered by the hire-purchase agreement are subject.

Clause 23.—This is self-explanatory.

Clause 24.—At present according to the doctrine of reputed ownership, all goods in the possession of the insolvent in his trade or business, by the consent and permission of the owner, under such circumstances, that he is the reputed owner thereof are deemed to be the property of the insolvent and, therefore, vest in the official assignee. Hence where the hirer becomes insolvent, the goods in his possession under the hire-purchase agreement vest in the Official Receiver. This results in considerable hardship to the owner of the goods. In order to remove such hardship this clause provides that on the insolvency of the hirer the Official Receiver shall have only the same rights and obligations in respect of the goods as the hirer had and the Official Receiver may with the permission of the Insolvency Court assign the hirer's right under the hire-purchase agreement even if there is a prohibition in the agreement against

such assignment. The clause also makes a similar provision in the case of a hirer being a company which is being wound up.

Clause 25.—This clause deals with successive hire-purchase agreements between the same parties. Where a hirer has paid the "statutory proportion" of the hire-purchase price [as defined in clause 19(1)—*Explanation*] he may like to obtain further goods on hire-purchase from the same owner and a consolidated agreement may be entered into between the parties covering the goods let under the first agreement and the goods subsequently supplied. The clause provides that such subsequent agreement will not in any way prejudicially affect the rights of the hirer in regard to the first agreement as a result of his having paid the "statutory proportion" of the hire-purchase price in respect thereof. In other words, if the "statutory proportion" of the hire-purchase price has been paid in respect of the first agreement the owner cannot exercise his right of seizure in respect of the goods comprised in the first agreement.

Clauses 26 *to* 30.—These are self-explanatory.

B. N. BANERJEE,
Secretary

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